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July 25, 2016

VIA US MAIL AND E-FILING

Federal Communications Commission
Office of Commissioner
Commissioner O'Rielly
c/o Amy Bender
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Presentation – In relation to Kohll's Pharmacy and Homecare Inc.'s Petition for Declaratory Relief and Waiver, FCC No. 02-278

Dear Ms. Bender:

On Thursday, July 21, 2016, I met with you along with Dr. David Kohll, Pharma.D, the President of Kohll's Pharmacy in relation to Kohll's petition that has been fully briefed. During our meeting I discussed the following points, with some added commentary from Dr. Kohll:

- Kohll's Pharmacy is a family owned business that was founded in 1948.
- Kohll's operates in nine locations in Nebraska and Iowa.
- The facsimile which resulted in a lawsuit brought by Ballard Nursing was a one-time facsimile sent by Kohll's on March 3, 2010, in response to a season flu update sent to Kohll's by the CDC.¹
- As we explained, the CDC periodically urged pharmacies such as Kohll's educate the public and businesses relative to the availability of flu shots.
- Notably, we explained that Kohll's was an innovator in performing both on-site and off-site flu vaccinations.
- Kohll's has determined of the 4,142 single faxes were allegedly sent, 577 were sent to existing Kohll's customers that had an established business relationship with Kohll's
- The facsimile in question (copied onto this letter) contained opt-out language.

¹ Notably, the facsimile was issued during the 2009-2010 H1N1 pandemic.

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- Briefing for summary judgment in state court cause of action is nearly complete and Plaintiff in the underlying action, Ballard Nursing, is seeking a \$6,200,000 class action based judgment based on treble damages (\$1,500 per facsimile).

- Ballard Nursing is seeking treble damages (\$1,500) per facsimile despite the fact that Kohll's only sent one facsimile to each business. The facts are far different than the common scenario where a business repeatedly calls or faxes a person after being told to stop. Treble damages might be appropriate under those facts but not under the facts of the pending case.

- Notably, nobody (other than the Plaintiff Ballard Nursing) complained about the subject facsimile.

I am in the process of attempting to track down the information that the CDC sent to Kohll's. When I find the information, I will supplement the record.

Thank you very much for meeting us. If you have any questions, please contact me.

Very truly yours,

x James C. Vlahakis

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